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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,659	05/01/2006	Emmanouil Domazakis	506845.3	8474
27526                      7590                      07/15/2011 HUSCH BLACKWELL LLP 4801 Main Street Suite 1000 KANSAS CITY, MO 64112				
EXAMINER				
STULIL, VERA				
ART UNIT		PAPER NUMBER		
1781				
NOTIFICATION DATE		DELIVERY MODE		
07/15/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-kc@huschblackwell.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/577,659

**Applicant(s)**

DOMAZAKIS, EMMANOUIL

**Examiner**

VERA STULII

**Art Unit**

1781

***—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —***

THE REPLY FILED 17 June 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 3.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☒ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.  
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 05/06/2011  
13. ☐ Other: \_\_\_\_\_.

/Vera Stulii/  
Primary Examiner, Art Unit 1781

Continuation of (3)

The proposed amendments filed 06/02/2011 will not be entered for the following reasons:

- they raise new issues that would require further consideration and/or search;
- they raise the issue of new matter;
- they are not deemed to place the application in better form for appeal by materially reducing or simplifying issues for appeal;

Claim 3 has been amended as follows:

--the phrase "until the extraction of meat protein has been achieved" now recites "until the extraction of meat protein has been completed".

In regard to this amendment, it is noted that the term "completed" suggests coming to an end, which also suggests that all of the proteins have been extracted, and thus the extraction of the protein has been completed. However, after careful consideration of the instant specification and original claims, the support for such phrasing has not been found. The specific degree or level of protein extraction was not described. The specification discloses the fact that the protein extraction has been achieved as a result of meat tumbling (page 7 bottom paragraph of the Specification), in regard to the term "completed", the instant specification only discloses "complete incorporation of the olive oil" (page 7 bottom paragraph, page 8 top paragraph). Therefore, this amendment would require further correction or clarification and search, and also raises the issue of new matter.

Continuation of (11):

Applicants' arguments submitted 06/17/2011 have been considered, but are not deemed persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention (page 4 paragraph 2, page 9 bottom paragraph of the Reply), it is noted that the features upon which applicant relies (i.e., "ready-to-eat meat products") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually (pages 5-9 and 14-15 of the Reply), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Domazakis is not relied upon as a teaching of the "entire muscular tissue" meat pieces. Domazakis is not relied upon as a teaching of the injecting or tumbling of meat. Domazakis is relied upon as a teaching of:

- Contacting meat with an appropriate brine, comprising water, salt and seasonings at low temperature (0° C) during mixing in the mixing machine([0038], Claim 1);
- Continuing mixing in the mixing machine until the temperature reaches 2° C ([0038]);
- Insertion of olive oil ([0038]);
- Continuation of mixing with simultaneous application of vacuum "in order to avoid oxidation" the temperature reaches 2 ° C ([0038]);

- Encasing meat with simultaneous application of vacuum and pasteurization ([0038])
- Freezing of the product (Abstract; paragraph [0032]).

Hendricks is relied upon as a teaching of the "entire muscular tissue" meat pieces. Hendricks discloses production of tender, flavorful, and juicy meat cuts without significantly increasing saturated fat content by injecting unsaturated vegetable fats such as olive oil (Abstract, page 5 line 58). Hendricks further discloses difficulties in production of a high quality meat fat and fattening of animals in order to produce higher meat quality (Col. 1 lines 37-1). Hendricks also discloses negative health effects associated with saturated fats consumption and positive health effects associated with unsaturated fats consumption (Col. 2 lines 58-68; Col. 3 lines 1-15). Hendricks discloses that these problems could be solved by injection of olive oil into low grades of beef in order to produce "tender, flavorful, and juicy" meat cuts "without significantly increasing saturated fat content" (Col. 2 lines 56-67). In regard to the "entire muscular tissue" meat pieces, Hendricks discloses rib eye, round and bottom round meat cuts (Col. 9 Table 1). Since both Domazakis and Hendricks disclose multiple nutritional benefits of olive oil and benefits of substitution of animal fat with olive oil ([0001]-[0012], [0015]), one of ordinary skill in the art would have been motivated to modify Domazakis and to employ the process of incorporation of olive oil in the "entire muscular tissue" meat pieces as disclosed by Hendricks for the benefits as disclosed by Domazakis and Hendricks. One of ordinary skill in the art would have been motivated to do so, in order to produce higher quality "tender, flavorful, and juicy" meat cuts without significantly increasing saturated fat. One of ordinary skill in the art would have been motivated to do so, in order to increase consumption of health-beneficial unsaturated fats. Brandt is relied upon as a teaching of the injecting or tumbling of meat. In case of the chopped meat, it is not necessary to employ injecting in order to contact meat with brine, the simple mixing is enough. Brandt discloses that the contact of marinade with meat in order to impart flavor could be performed via injecting (page 4). Brandt discloses marinating/treatment of meat using injectors, tumblers, massagers (page 1). Brandt discloses that "[m]ixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils" (page 1). Therefore, Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Hendricks also discloses injecting as a method of introduction of marinade in the whole muscle meat tissue (Abstract). One of ordinary skill in the art would have been motivated to employ alternative method of contacting marinade/brine with meat such as injecting in order to achieve desired level of contact of meat with marinade. One of ordinary skill in the art would have been motivated to do so, since injection of brines/marinades into "entire muscular tissue" meat cuts was a well established practice in the art. Since Brandt discloses that tumbling or injecting are alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to modify Domazakis in view Brandt and to employ tumbling or injecting instead of mixing as an alternative technique for addition of various components to the meat as disclosed by Brandt. Since Domazakis discloses addition of marinade and olive oil by mixing, Brandt discloses that mixing, tumbling or injecting as alternative methods of addition of various

ingredients to the meat, one of ordinary skill in the art would have been motivated to inject marinade and then further add olive oil by tumbling of meat.

In response to Applicants' arguments regarding the processing of meat that involves "cooking", it is noted that Hendricks discloses incorporation of oil into fresh meats, and therefore, it would have been obvious to further cook the fresh meat with incorporated olive oil for further consumption (page 10 paragraph 3 of the Reply). Further in regard to the arguments directed to the "ready-to-cook" products vs. "ready-to-eat" product, it is noted that the claim is directed to the "meat-based product from entire muscular tissue", and there is nothing in the claim that further defines or suggests the state of meat (cooked, cured, fresh, etc.).

In response to Applicant's arguments on page 11 of the Reply regarding Hendricks reference, it is noted that both Domazakis and Hendricks discloses incorporation of unsaturated fats into meat products in order to increase the quality of meats. Therefore, both references provide the same problem and solution, and therefore provide the common ground for combination. Further in this regard, as stated above, it is noted that Domazakis discloses incorporation of brine into meat product by mixing, insertion of olive oil and then further incorporation of olive oil into meat product by mixing. Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Therefore, Brandt discloses alternative methods of incorporating of various ingredients into meat products. One of ordinary skill in the art would have been motivated to employ alternative methods of contacting marinade/brine/oil with meat for the reasons as stated immediately above.

In response to applicant's argument regarding the extraction of proteins (pages 11-12 and 16 of the Reply), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Continuation of (10).

The Declaration of George Stephanopoulos pursuant to 37 C.F.R. 1.132 has been considered, but was not sufficient to overcome the case of obviousness. Therefore, claim 3 is rejected for the same reasons as stated in the Non-Final Office action mailed 11/09/2010 and Final Office action mailed 04/21/2011.

Further in regard to the Declaration of George Stephanopoulos pursuant to 37 C.F.R. 1.132:

--on page 4 of the Declaration, Declarant states that no evidence has been provided so far with regards to "ready-to eat meat". This argument is not persuasive for the reasons as stated above;

--in response to the "long felt need" argument, it is noted that both Domazakis and Hendricks discloses incorporation of unsaturated fats into meat products in order to increase the quality of meats;

--in response to Declarant's argument regarding the extraction of proteins (page 5 of the Declaration), the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Further in this regard it is noted that extraction of proteins is seen to have been an inherent result of tumbling.

--in response to Declarant's argument regarding the references individually (pages 5-6 of the Declaration), this arguments are not deemed persuasive for the reasons stated above.